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NO._____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 851, AFL-CIO, ET AL,
Petitioners

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONERS' PETITION FOR CERTIORARI

SUPPLEMENTAL APPENDIX

BRIEF FOR PETITIONERS

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 69-B-3
(All Ports)

EQUAL EMPLOYMENT OPORTUNITY
COMMISSION,
Plaintiff

v.

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, et al.,
Defendants.

(Filed March 22, 1983)

FINAL MERGER ORDER

A. *History*

This suit was filed in January 1969, by the Equal Employment Opportunity Commission (E.E.O.C.) against the International Longshoremen's Association (I.L.A.), the South Atlantic and Gulf Coast District, I.L.A., (the District) and all of the locals of the I.L.A. in the Ports of Texas, alleging that the maintenance of racially segregated locals constituted unlawful racial discrimination in employment. The case was filed in the Brownsville Division before the Honorable Reynaldo G. Garza. After many years of hearings, appointment of Special Masters (Hon. A. A. White and Hon. Andrew L. Jefferson, Jr.) and extensive discovery, parts of the case were taken to the Court of Appeals twice and twice the Supreme Court denied applications for writ of certiorari.[1]

In March 1981, the case was transferred to the Houston Division after Judge Garza's elevation to the Court of Appeals, and it was assigned to the undersigned at that time.

The undersigned undertook to become familiar with the history of the case through the then 240 docket entries on the Court's Docket Sheet and to begin to complete the merger of the sister locals in each port as ordered by the Court of Appeals.[2] The Court has, among other matters, reviewed pleadings, transcripts of prior hearings and recommendations of the Special Masters.

The Court held two mass hearings on August 13, 1982, and March 11, 1983, involving attorneys and other representatives of the twenty-nine actively involved locals. There were special hearings for the Port of Galveston and Port of Houston and innumerable conferences with counsel in chambers.

On August 26, 1982, the Court entered an Interim Order permanently enjoining maintenance of separate locals and setting out a procedure and deadlines for effectuating the merger.

Pursuant to the Order of August 26, 1982, a merger committee was formed in each port consisting of three representatives from each sister local to be merged. These committees were to meet at least weekly to resolve all merger issues including: merging of seniority lists, temporary and permanent hiring hall locations, hiring hall procedures, the form of interim government, election of permanent officers, draft of a new constitution and by-laws, transfer of assets and liabilities, amount of service charge fees or dues, and any other problem related to merger. A detailed, written report on these subjects was

submitted to the District on November 1, 1982, including any areas of disagreement and the alternate solutions proposed.

On December 6, 1982, the District filed with the Court a recommended plan of merger on a port-by-port basis. Wherever possible, the District attempted to resolve areas of disagreement between the merging locals or the District recommended adoption of one alternative and gave supporting reasons. The locals and the E.E.O.C. were given fifteen days to object to the District's recommendations. To insure that every group had an opportunity to be heard, objections and counter-proposals were received and considered by the Court after the deadline and up until the March 11, 1983 hearing.

In summary, this Court is thoroughly familiar with the historical, economic, and political facts in each port and the position advocated by each local. The arguments of all parties, both those represented by counsel and those locals who represented themselves, have been carefully weighed.

From the outset, this Court has stated to all the parties its firm conviction that the mechanics of merging each set of locals was best left in the hands of the parties themselves. Decisions affecting the day-to-day operation of longshoremen's unions are best made by longshoremen, not federal courts. This was the underlying premise for the structure of the August 26, 1982 Order. However, in those instances where the locals could not or would not come to an agreement on certain issues, the Court will choose among the various alternatives presented by the parties. The Fifth Circuit's mandate may no longer be forestalled by disagreements and indecision over how to merge.

The most hotly disputed merger issue has been the merger of seniority lists. The parties' perceptions as to the fairest way to merge them varied widely because of widely disparate standards for earning and maintaining seniority in the various locals, historical animosities and jealousies often pre-dating the work-history of any current member, and de facto agreements about the division or allocation of work in each port. This work division centered around the so-called "50%-50% rule", whereby the work in some ports was allocated one-half to the "black local" and one-half to the "white local." The Fifth Circuit and Judge Garza had previously noted the "tendency" of this ostensibly fair rule to discriminate in any port where the number of individuals available for and seeking work in both the black and the white locals was not the same.[8] This factor was further complicated because two ports had two black locals and one white. In Galveston, a separate Mexican-American local had a charter to unload only green fruit, and in Brownsville there was a "75%-25% rule" between a Mexican-American local and a "black local" which contained white longshoremen.

Mindful that this was a merger that no party except the E.E.O.C. sought, and that practically every local, regardless of racial membership, has resisted merger at some point in this case's fourteen-year history, the Court is aware that no plan it devises is going to please everyone in every particular. Great effort has been made to find the fairest possible solution for each set of locals, giving weight to general as well as peculiarly local problems.

Every port presented a different fact situation. Thus, no one method for merging seniority lists would achieve a fair result in all ports. Where the merger committees

were able to reach an agreement on how to merge their rosters, the Court, after review by the District and the E.E.O.C., accepted and approved their agreement. In those ports where the merger committees could not agree or work out a compromise, the Court is ordering the application of that method which, in the Court's considered opinion, will obtain the most equitable result. In making its decision, the Court was mindful that this is a race discrimination suit. The various choices to be made in this case cannot be based only on the economic criteria employed in the usual corporate merger situation. Here, the merger's purpose is to eliminate an employment practice that discriminates or tends to discriminate on the basis of race and which, therefore, violates federal law.

B. *General Provisions Applicable to All Ports*

It is, therefore, ORDERED, DECREED, and ADJUDGED that:

1. The International Longshoremen's Association has been permanently enjoined since August 26, 1982, and shall be so enjoined from chartering, maintaining, or authorizing racially-segregated locals in any port of Texas.

2. The International Longshoremen's Association shall on or before April 1, 1983, revoke or dissolve the charter of each of the following locals and issue a new charter with a new local number for each of the following sets of locals.

a. *Port of Beaumont:* Locals 325, 1306, and 1610.

b. *Port of Brownsville:* Locals 1367 and 1368.

c. *Port of Corpus Christi:*
   (1) Locals 1224 and 1225.
   (2) Locals 1280 and 1281.

d. *Port of Freeport:* Locals 1723 and 1818.

e. *Port of Galveston:* Locals 307, 329, 851, and 1576.

f. *Port of Houston:*
(1) Locals 872 and 1273.
(2) Locals 1330, 1331, 1525 and 1581.

g. *Port of Orange:* Locals 341 and 814.

h. *Port of Port Arthur:* Locals 1029 and 1175.

i. *Port of Port Lavaca:* Locals 1758 and 1963.

j. *Port of Texas City:* Locals 636 and 991. The International will advise the Court within thirty days if Local 1406 is not going to be dissolved immediately.

3. The above-named locals have been permanently enjoined and restrained since August 26, 1982, and shall be so enjoined, either under their current numbers or the new ones, from discriminating in employment opportunities against any individual on the basis of race, color, or ethnic background, by maintaining separate hiring halls, or from engaging in any act or practice which has the purpose or effect of discriminating against any individual on account of his or her race, color, or ethnic background.

4. Commencing April 1, 1983, each of the above-named sets of locals in each port shall operate and conduct all business out of a single hiring hall as a single local. The hiring hall procedures, interim officers, new Constitution and Bylaws, service charge fees or dues, as approved herein, shall be effective that date. All assets and liabilities of the old locals shall be the property and responsibility of the new merged local, with all decisions regarding the disposition of these assets and liabilities

being made by the officers and executive board of the new merged local.

5. All prior check-off authorizations shall remain in effect and authorizations under the old dissolved local number shall temporarily constitute valid authority for deductions for work performed under the new merged local number. When the new local numbers are made available, any and all check-off authorizations for the deduction of service charge fees, dues, and any and all other permissible deductions shall be reformed by substituting the new local number, and by substituting the new service charge or dues for the amount of such deduction previously authorized for the existing local.

6. This Order will specify below the method to be used to merge the seniority rosters in each port. The Merger Committee(s) for each port shall immediately upon receipt of this Order accomplish the compilation of a merged list according to the prescribed method (if such has not already been accomplished), and file a copy of such list with counsel for the District, Mr. James R. Watson, Jr. The District shall assist the various locals, particularly the smaller ones and those not represented by attorneys, in compiling a merged seniority roster so that the April 1 deadline is met.

7. Upon approval of a merged seniority roster each old local shall appoint one member, and one alternate member, to a seniority review board which shall function in the manner set forth below during the period from the date of the Court's Order until December 31, 1983, or until all complaints pending before it are resolved. Such committee shall exist for the sole purpose of resolving complaints of any individual concerning his/her place-

ment on the seniority list adopted herein, and shall function in accordance with the following procedure:

a. The seniority roster approved by the Court shall be posted in a conspicuous place in the local union hiring hall, along with a notice setting forth the complaint procedure described herein.

b. Any person who feels he has been improperly classified under the seniority system adopted by the Court, or who feels that he has not received proper credit for prior years of service, or who feels that he has been placed at a disadvantage due to the improper classification of some other individual shall have the right to file a written complaint with the seniority review board within thirty (30) days following the posting of the seniority list.

c. Upon the filing of any such complaint, the seniority review board shall promptly investigate same, with the complainant being given full opportunity to be heard. If the complaint is that some other person has been improperly classified, that person shall be given a copy of the complaint and shall also be given full opportunity to present evidence and be heard.

d. Upon completing its investigation, the seniority review board shall make a written report on the results of its investigation to the complainant and, where necessary, to any other person whose standing on the seniority roster is being challenged.

e. Within ten days following receipt of the written report from the seniority review board, any per-

son who deems himself to be adversely affected by such rules shall have the right to file a written appeal with Dean A. A. White, 5532 Sugar Hill, Houston, Texas 77056. Dean White shall review and investigate such appeals, and conduct hearings where he deems it necessary. He shall issue a written decision, which shall be final and binding on all parties. Dean White's reasonable expenses and compensation shall be borne by the new local.

f. The ruling of Dean White made pursuant to the preceding paragraph shall be final and binding.

This procedure shall be followed in each new merged local, unless specifically provided otherwise below.

C. *Particular Orders Applicable to Each Port*

1. *Port of Beaumont*

a. In this port, three deep sea locals are merging into one new local. Historically, the work has been allocated 50% to the white local (Local 1610), and 25% to each of the black locals (Locals 325 and 1306). Yet Local 325 has 34% of the total membership; Local 1306 has 29%; and Local 1610 has 37%.

b. The Master issued an interim order of January 22, 1981, pertaining to this port, attaching a recommended merged seniority roster for the three locals based on length of service. This Court adopted the Master's order in the August 26, 1982 Order.

c. The District and Local 1610 have urged the Court to approve the adoption of a plan which would ensure that Local 1610 longshoremen continued to have

50% of the work available to them. Locals 325 and 1306 urge the application of a length-of-service approach. The E.E.O.C. recommends staying with the Master's list.

The District's analysis in the Watson letter of February 17, 1983, reveals that the application of a length of service approach yields a "ratio-rank" result in this port; that is, the distribution of membership approximates the old local's percentage of total longshoremen available for work in the port of Beaumont. A slotting approach results in gross distortions on the seniority list, with many junior men having a higher place than more senior ones.

d. The Court finds that length of service is the most equitable principle to apply in merging the seniority rosters in Beaumont. Therefore, the updated Master's list attached to the Watson February 17, 1983, letter as Exhibit "D" is hereby approved as the merged seniority list for Locals 325, 1306, and 1610. If a hiring hall procedure that utilizes this list has not yet been prepared and approved, the District is ordered to see that one has been approved in time to be utilized on April 1, 1983.

e. As to all other merger issues, the District's Recommended Plan of Merger for the Port of Beaumont is hereby approved and adopted by the Court as its Order.

2. *Port of Brownsville*

a. In the Port of Brownsville, Deep Sea Locals 1367 and 1368 shall be merged. This port operates on a gang system. Local 1367 is a Mexican-American local, with seventy (70) members, and has been receiving 75% of the available work in Brownsville. Local 1368 is a predominantly black local, with some Mexican-American and Anglo membership. Local 1368 has approximately

fifty members and has been allocated 25% of the available work. Throughout the course of this lawsuit, the E.E.O.C. has expressed concern about the disproportionate work division in Brownsville.

b. The Court approves the Master's and the District's recommendations to continue the gang system in Brownsville. At the March 11, 1983, Hearing Locals 1367 and 1368 agreed to accept each other's seniority lists as valid. According to Mr. Herman Wright's letter to the Court dated February 17, 1983, the Merger Committee has agreed to the seniority system and hiring hall procedures proposed by Local 1367 in its November 1, 1982, report to the District, with certain amendments and modifications listed in Mr. Wright's letter.

The proposed seniority system and written hiring hall procedures, as modified pursuant to Mr. Wright's February 17, 1983, letter, are approved by the Court, with the following conditions:

(1) Of the initial sixteen (16) gang foremen in the new local, ten (10) shall be from Local 1367's list and six (6) from Local 1368's list.

(2) The hiring hall procedures are to be written in such a way that each gang is comprised of longshoremen from Locals 1367's list and Local 1368's list chosen on a nondiscriminatory basis that approximates the 58%-42% ratio of 1367 to 1368 longshoremen who are available to work in the port of Brownsville.

The District is ordered to file with this Court on or before March 28, 1983, a copy of the final approved seniority plan and hiring hall procedure for this port which incorporates the modifications in Mr. Wright's Feb-

ruary 17 letter and which adequately provides for the Court's requirements in subparagraphs (1) and (2) above.

c. The Court approves and orders the use of Local 1367's hiring hall as a temporary hiring hall. The new merged local may decide by democratic process whether to remodel Local 1367's existing hall or acquire a new one.

d. The Constitution and Bylaws as agreed to by the Merger Committee and as modified to meet the provisions of federal law and the International Constitution, pursuant to the Watson letter of February 7, 1983, are approved as the Constitution and Bylaws for the new merged local. The Court is aware that the Bylaws may require amendment regarding the making of discipline decisions by the Seniority Review Board and that counsel were given until March 26 to work out that problem. However, this need not delay the full implementation of this Merger Order in any way. The District shall advise the Court of any approved amendment to the Bylaws in its March 28, 1983, submission of the hiring hall procedures and seniority system.

e. The plan for interim government agreed upon at the December 30, 1982, Watson-Merger Committee meeting and as stated in the Watson letter to the Court of January 10, 1983, is approved and adopted as this Court's Order.

f. The Merger Committee and District's Recommendation for a 5% service charge and dues of $10.50 per quarter, is approved and adopted.

g. Nomination of permanent officers shall take place in December 1983, in accordance with the provi-

sions of Article IX of the approved Constitution and Bylaws for the new local.

h. The District's recommendation for the transfer of all assets and liabilities of both locals is approved and adopted as this Court's Order. The amount owed Dean A. A. White by Local 1368 is to be paid by the new local within thirty days of this Order. The new local is to sell Local 1368's real estate as soon as possible and use the proceeds to pay off, first, the balance of the First National Bank note and, second, the salary owed the current president of Local 1368.

3. *Port of Corpus Christi*

a. *Deep Sea Locals 1224 and 1225* are being merged. The Master entered an Interim Order as to this port on February 23, 1981. The Merger Committee reached agreement on all merger issues as follows:

(1) Local 1224's hiring hall will be used "as is" temporarily and remodeled for permanent use.

(2) The Master's interim order provisions as to a merged seniority roster and hiring hall procedure have been adopted, with the stipulation that a gang system be used for Gold Star and Class "A" longshoremen.

(3) A new Constitution and Bylaws have been adopted.

(4) Interim government will be by a committee comprised of all the officers of the existing locals.

(5) Permanent officers will be elected in December 1983.

(6) All assets and liabilities of the existing locals will be transferred to and assumed by the new local;

(7) The service charge for the new local will be 5% of gross wages. Dues will be $3.00 per month.

The District recommended approval of the above agreements. The Court hereby approves and orders that the above agreements shall be the merger plan for the Port of Corpus Christi deep sea locals.

b. *Warehouse Locals 1280 and 1281.* The Master's February 23, 1981, interim order also applied to the warehouse locals. The 1280-1281 Merger Committee reached agreement on all merger issues as follows:

(1) The new merged Corpus Christi warehouse local will also use Local 1224's existing hall.

(2) The warehouse merger committee agreed on a seniority roster using the gang system and a hiring hall procedure, which was attached to Mr. Watson's letter of January 10, 1983, as Exhibit 1.

(3) A new Constitution and Bylaws were agreed upon and submitted to the District for approval.

(4) Locals 1280 and 1281 have agreed on a procedure for interim government that consists of a special election by the combined membership, whereby one of the current presidents will be elected interim president and the other will become the executive vic-president.

(5) Permanent officers will not be elected until June 1986, in accordance with the new Constitution and Bylaws. The interim officers will serve until that time.

(6) All assets and liabilities of the existing locals will be transferred to and assumed by the new local.

(7) The service charge for the new warehouse local will be 5% of gross wages. Dues will be $15.00 per quarter.

The District recommended approval of the above agreements. The Court hereby approves and orders that the above agreements shall be the merger plan for the Port of Corpus Christi warehouse locals.

4. *Port of Freeport*

a. In this port, Deep Sea Local 1723, with seventy-four members, is merging with Deep Sea Local 1818, which has sixty-five members.

b. The merged seniority roster agreed upon by the Freeport Merger Committee, and attached to the Watson letter to the Court dated February 4, 1983, was recommended for approval by the District. The Court has reviewed the roster and it appears basically fair to both sides. It is hereby approved and adopted by the Court.

c. These two existing locals have been unable to resolve the problem of a hiring hall site on either a temporary or permanent basis, although the Master originally instructed them to find a solution by September 25, 1980. At the March 11, 1983, hearing, counsel informed the Court that the latest series of negotiations for a site had fallen through. The Court therefore orders that Local 1723's present facility shall be used as a temporary hiring hall for the new merged local. The membership of the new local may determine the most feasible way to acquire a permanent hall.

d. To the extent the hiring hall procedure was agreed upon by the Merger Committee and approval recommended by the District, it is hereby approved and adopted. There are two areas in which agreement could not be reached: (1) the selection of gang foreman, and

(2) the foreman for A.M. and P.M. orders. The District recommended approval of Local 1723's proposals on both matters. The Court has reviewed the proposals of both locals on these two subjects and hereby approves and adopts Local 1723's proposals; that is, gang foremen and assistant gang foremen are to be replaced by election, and the same foremen will work the A.M. and P.M. orders.

e. The proposed Constitution and Bylaws for the new deep sea local in Freeport, as amended to comply with the International Constitution and federal law, is hereby approved and adopted.

f. The Freeport Merger Committee could not agree on a plan for interim government of the new local. The proposal by Local 1723, which received the District's recommendation, involves an election timetable that is not workable in view of the April 1 deadline for merger. Therefore, the Court hereby approves and adopts Local 1818's proposal that the present officers of both existing locals shall remain in office during the interim period with shared responsibility for those offices.

g. The election of permanent officers shall be as provided in the approved Constitution and Bylaws.

h. The assets and liabilities of both locals shall be transferred to and assumed by the new local.

i. The Merger Committee's agreement regarding the service charge fee and dues has been recommended by the District. It is hereby approved and adopted.

5. *Port of Galveston*

a. The port of Galveston has presented special problems and vigorously disputed merger issues since the

inception of his lawsuit. In this port, four deep sea locals are merging. The white local, Local 307, has 35% of the total number of the deep sea longshoremen in Galveston and currently performs 38% of the work in that port.[4] Local 329, one of two black locals, has 9% of the longshoremen and performs 6% of the work. Local 851, the other black local, has 21% of the longshoremen and performs 30% of the work. Local 1576, a Mexican-American local, has 34% of the total number of longshoremen and has performed 26% of the longshoring work in that port, over the last three years. Local 1576, the so-called "Banana local," has a green-fruit charter and presently performs only that kind of work. It is undisputed that at this time, the green-fruit work in this port is increasing annually, while all other longshoring work is decreasing. This situation is markedly different than that which existed earlier in this case. A special hearing was held in Galveston on January 28, 1983, to resolve the hiring hall question and for argument on other merger issues.

b. The Merger Committee has not been able to agree on a method for merging the four seniority rosters. The District, in its December 6, 1982, Recommended Plan of Merger for the Port of Galveston, recommended a ratio-rank approach. This formula accepts every longshoreman's seniority in his own former local as valid. It precludes a windfall or a loss to any group. Given the unique relationship and history among the various locals in Galveston, and the fact that Local 1576 is actually "bringing" work to the merger that was not heretofore available to members of other locals, the Court finds that the application of the ratio-rank method would effect the fairest merger of seniority lists in Galveston.

Therefore, the Galveston Merger Committee, with the assistance of the District, is ordered to merge the seniority lists of Locals 307, 329, 851 and 1576 in the following manner:

(1) *Step 1:* Combine the seniority lists of the two black locals, Locals 329 and 851, using a straight length of service procedure. Decide all ties by lot. This will essentially equalize the black and white general cargo deep sea locals, both in terms of size and work performed.

(2) *Step 2:* Merge the three resulting seniority lists, applying the ratio-rank method. Ties within an existing union in rank should be decided by lot. Ties among longshoremen from different existing locals in forming the composite merged list should be decided by length of service first, then by lot. There is to be no "reclassification" of any local's seniority list. No local's seniority is to be discredited because of varying standards.

c. The hiring hall question has previously been resolved by this Court. Local 851's hiring hall shall be used by the new merged local.

d. The written hiring hall procedures as proposed by the Merger Committee and recommended by the District, shall be reformed as necessary to conform to the merged seniority roster compiled pursuant to subparagraph b above, and to give full credit for the seniority each longshoreman validly earned in his existing local. A copy of this redrafted hiring hall procedure will be filed with the Court by the District no later than March 28, 1983, along with the District's recommendation for approval.

e. The proposed Constitution and Bylaws for the new local, as amended pursuant to the Watson letter to

the Court of February 4, 1983, and the Merger Committee letter to the District of February 21, 1983, are hereby approved and adopted.

Objections have been filed by individual locals as to Bylaw provisions allowing retirees to vote and regarding the amount of pay for officers of the new local. The Court believes that these are internal organizational matters best decided by the Merger Committee, not a federal court. They do not directly bear upon the purpose of the merger. Therefore, the Court will not second-guess the Merger Committee on those questions.

f. The Galveston Merger Committee elected interim officers from the Merger Committee membership. An objection to this election has been made by Locals 851 and 329. The District recommended approval of the elected officers and their amount of pay. The Court finds nothing in the Galveston Merger Committee's provision for interim government which violates either the letter or spirit of the August 26 Order or affects the goals of the merger. The Merger committee's proposals are hereby approved and adopted.

g. The Merger Committee's agreement that the election of permanent officers will be in accordance with the new Constitution and Bylaws is approved and adopted. Nomination and election of permanent officers shall take place in November and December of 1983 respectively.

h. The Merger Committee agreed on the transfer of assets and liabilities to the new local. Their agreement is approved and adopted.

i. The Merger Committee's agreement as to a 5% service charge fee and dues as set forth in the new Constitution and Bylaws is approved and adopted.

j. Other merger issues pertaining to burial plans, insurance, and credit union membership are to be resolved by the Merger Committee, or after April 1 by the interim officers, and executive board, in a nondiscriminatory manner.

6. *Port of Houston—Deep Sea Locals*

a. Two large deep sea locals are being merged in the Port of Houston. Each has just over 1,000 classified longshoremen. They have been splitting the work of this port 50-50.

b. The most serious controversy in this port has revolved around the seniority roster. The two Masters appointed for the Houston Deep Sea Locals, after five years of proceedings, compiled an accurate seniority list for each local through fiscal year 1979. These component lists were certified to the Court as accurate, both as to the listing of classified longshoremen and the correct credited years of seniority for past service rendered by each longshoreman according to the applicable rules and standards of his local. The Masters' component seniority lists are hereby adopted as final by this Court. Both locals have subsequently updated their component lists through fiscal year 1982.

The two locals have proposed different methods for consolidating the two component lists. Local 872 urges the Court to adopt a simple length of service approach. Local 1273 proposes a "slotting" method with grouping in equal numbers (so far as practicable) in one-year seniority positions. Upon analysis, the 1273 proposal is actually a hybrid procedure, which utilizes features of the length of service, slotting, and ratio-rank methods. The District did not object to the 1273 plan.

Due to the singular situation of the Port of Houston Deep Sea Locals, in that the merger involves only two locals, of substantially the same size, who have each been doing one-half the available work, the Court finds that the method proposed by Local 1273 is the most equitable procedure for consolidating the seniority lists of Local 872 and 1273. This will effectively place each longshoreman in the same position regarding the total available work in the port as he was in prior to the merger. The Court deems this appropriate, since there has been no evidence of actual past discrimination in this port.

It is agreed by all parties and the Court finds that an application of the ratio-rank method to the Houston Deep Sea Locals would yield substantially the same result as the method proposed by Local 1273. There is no reason to undertake such a lengthy and complicated process which would only serve to delay the merger.

It is, therefore, ordered that the component lists for the payroll fiscal year ending September of 1982 of Locals 872 and 1273, heretofore submitted to this Court, shall be merged by slotting the longshoremen of the two locals upon a one-for-one basis; that is, alternately matching the longshoremen of the two locals in the order of their seniority in equal numbers as nearly as practicable in each of the thirty-seven seniority positions. The longshoremen of the two locals should be grouped in equal numbers so far as practicable in these one-year seniority positions. Minor variations in precisely equal-number slotting in seniority positions are appropriate in the interest of placing in the same seniority positions those longshoremen of each local who earned equal credit for past service. A supplementary order on the Houston Deep Sea Locals, adopting and attaching the merged seniority

roster prepared by Local 1273 and submitted to the Court on March 17, 1983, will be issued this date.

The seniority review board procedure described in paragraph B.7 above shall be applicable to the new Houston Deep Sea Local, but review will be limited to fiscal years 1980, 1981, and 1982.

c. Local 1273's hiring hall shall be used on a temporary basis, commencing April 1, 1983, until the new merged local can complete arrangements for a larger permanent hiring hall.

d. A final written hiring hall procedure for the new deep sea local in Houston has not been possible because of the controversy over the merged seniority list issue. The Merger Committee is directed to provide the District and the Court with a final proposed written hiring hall procedure no later than March 28, 1983. The District will inform the Court in writing by March 30, 1983, of any objection or its recommendation of approval. The hiring hall procedure should provide that the past seniority credit for each longshoreman is fixed only through fiscal year 1979. Any adjustment of seniority credit for time subsequent to FY 1979 shall be in accordance with the procedures outlined in subparagraph B.7 above.

e. The new Constitution and Bylaws, as amended to conform to the requirements of the International and applicable federal law, pursuant to the Watson letter of February 7, 1983, to the Court are approved and adopted.

f. The Merger Committee agreed upon a slate of officers for interim government of the new merged local and that election of permanent officers would be in 1984

in accordance with the new Constitution and Bylaws. The District recommended approval. The Merger Committee's decisions on these issues are approved and adopted.

g. The Merger Committee agreed upon a service charge fee of 4% of gross wages for the new local. The District recommended approval. The service charge fee is approved and adopted.

h. There has been difficulty and delay in securing an audited financial statement of Local 872. At this time, such statement has been provided, and Local 1273's auditors are inspecting 872's books and records. Additionally, Local 872's real estate is entangled in a suit to try title in State court. A hearing on this matter is scheduled before this Court on April 4, 1983.

Therefore, all steps shall be taken to convey insofar as is legally possible, the assets and liabilities of Locals 872 and 1273 to the new local immediately. Furthermore, from April 1, 1983, all decisions about the disposition of or legal steps necessary to clear title to, Local 872's assets shall be made by the interim officers. A supplementary report on this merger issue will be filed with the Court by the new local within 45 days of the date of this Order.

7. *Port of Houston—Warehouse Locals.*

a. Four warehouse locals are merging in the Port of Houston. Local 1330 has 220 members; Local 1331 has 226; Local 1525 has 89; and Local 1581 has 63.

b. The immediate and complete merging of the seniority lists of all four locals is rendered impossible by

their participation in two separate pension, vacation and welfare (PVW) plans. Locals 1330 and 1331 have a contract with the West Gulf Maritime Association (WGMA), while Locals 1525 and 1581 have a contract with a smaller employer group. These plans are administered through separate Taft-Hartley trust agreements which are strictly governed and regulated by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.* The merger of the two plans requires a lengthy and complicated procedure involving agreement on the part of the two employer groups, an actuarial study of the Local 1580-1581 plan, and probably an additional contribution by Local's 1580-1581's employers.

Because of the different PVW plans, the Merger Committee has proposed that Locals 1330's and 1331's seniority rosters be merged into one seniority list, and Locals 1580's and 1581's rosters merged into another seniority list. Initially, within the new merged warehouse local there would two different lines of seniority. Group I would consist of the present Local 1330-1331 longshoremen and Group II would consist of the present Local 1525-1581 longshoremen. After two years, a Group III would be started which would operate along with Groups I and II for a three-year period. It is believed that at the end of this five-year period, by virtue of attrition and extensive collective bargaining and negotiations, a single line of seniority and a single PVW plan could be created. The District has not objected to this proposal.

While the above-described five-year plan is far from ideal, it is the only practical solution to the two-PVW funds problem which has been put before the Court. It is

therefore approved and adopted, with the understanding that the District, the officers of the new warehouse local, and any future negotiating teams from the new local are under an on-going obligation to utilize their full efforts, energies and resources to achieve a single seniority list for hiring purposes as soon as possible, but in no event longer than five years.

c. Locals 1330 and 1331 have been unable to agree on a merged seniority roster. Local 1331 urges a straight length-of-service approach giving each longshoreman full credit for the years now credited him by his existing local. Local 1330 originally proposed, and the District recommended, adjusting Local 1331's seniority list by a 300-hour standard for earlier years, and then applying a length-of-service method. On March 4, 1983, Local 1330, in a supplemental response to the District's recommendations, proposed a third approach—a "slotting" and grouping within classifications—a method very similar to that approved for the Houston Deep Sea Locals. The Court has carefully reviewed the lists that result from application of each procedure. The 1330 proposal approximates a ratio-rank merging of the two rosters. This is the fairest and most appropriate result between these two locals of almost equal size who have been splitting the available work evenly. The Court approves and adopts the Local 1330 proposal for merging Locals 1330's and 1331's seniority lists.

d. Locals 1525 and 1581 have submitted through their counsel, Mr. Herman Wright, a merged seniority roster based on length of service. There are still disagreements between the two locals as to the validity of the other's list. The Court has had great difficulty in securing seniority rosters for these two locals. Four and one-half

months after the lists were due to the District, there are still problems. Therefore, the Court now orders that Locals 1525's and 1581's seniority lists be merged on a ratio-rank basis. The District shall give whatever assistance is required, so that hiring from a merged list may commence April 1, 1983.

e. Local 1330's hiring hall shall be used by all four warehouse locals on a temporary basis. The membership may decide on a democratic basis what provisions to make for a permanent hiring hall.

f. The agreed-upon hiring hall procedures submitted by Mr. Eric Nelson's February 4, 1983, letter to Mr. Watson, are approved and adopted. Local 1330's proposal for Sections 18-22 of the hiring hall procedures appear fair and reasonable to the Court, and no alternative proposals have been presented. Local 1330's proposal for these sections is approved to the extent they are consistent with the merged seniority system adopted in subparagraph c above. A final amended version of a hiring hall procedure shall be submitted by counsel to the District by March 28, 1983. The District will notify the Court of any disapproval by March 30, 1983.

g. The Constitution and Bylaws agreed upon by the parties is approved and adopted. The Court is advised by Mr. Nelson's March 15, 1983, letter that the disagreement over salary structure for the officers has been resolved.

h. The parties' agreement regarding officers for interim government appears fair and is approved by the Court.

i. The plan to have election of permanent officers on November 1, 1984, is approved and adopted.

j. The assets and liabilities of all four warehouse locals will be transferred to and assumed by the new merged local. All decisions regarding the disposition of the assets will be made by the officers and executive board of the new local.

k. The agreed-upon service charge fee of 5% of gross wages is approved and adopted.

8. *Port of Orange*

a. In the Port of Orange, Deep Sea Local 341 with twenty-five members is being merged with Local 814 which has thirty-five members. The Master made certain findings of fact and conclusions of law dated August 29, 1980. This Court adopted them in its August 26, 1982 Order.

b. The Port of Orange Merger Committee agreed upon a merged seniority roster. The District recommended approval of that list in its Recommended Plan of Merger for the Port of Orange. The Court hereby approves and adopts that roster for the new local in Orange.

c. The Merger Committee could not agree on either a temporary or permanent hiring hall. The Court hereby orders that Local 814's hiring hall be used as a temporary hiring hall. The membership of the new merged local may be decided on a democratic basis what arrangements are most feasible for a permanent hiring hall.

d. The hiring hall procedures agreed to by the Merger Committee and recommended by the District are approved and adopted by the Court.

e. The Merger Committee has agreed upon a new Constitution and Bylaws; however, they have not been

submitted to the District for approval. The Merger Committee is hereby ordered to submit the proposed Constitution and Bylaws to the District for approval within seven days of the date of this Order. The District shall inform the Court immediately of any problem regarding this issue.

f. The Merger Committee has agreed that all of the present officers of the existing locals will be retained on an interim basis, with shared responsibilities for each office and with each continuing to receive his usual pay. The Court approves and adopts the Merger Committee's proposal.

g. The Merger Committee has proposed the nomination of permanent officers for the new merged local in November 1983, election in December 1983, and assumption of office in January 1984. The Court approves and adopts the Merger Committee's proposal.

h. All assets and liabilities of the existing locals shall be transferred to and assumed by the new local.

i. The District recommended approval of the Merger Committee's proposed 5% service charge. It is so approved and adopted by the Court.

9. *Port of Port Arthur*

a. Deep Sea Local 1029, with approximately seventy members, is merging with Deep Sea Local 1175 which has approximately fifty members.

b. The Merger Committee agreed upon, and the District recommended approval of, a merged seniority roster, written hiring hall procedures, disposition of assets and liabilities, a 5% service charge, dues of $1.00 per month, and a plan for interim government by a joint-

officer system with shared duties and rotating business agents. The Merger Committee's proposals on these merger issues as contained in the District's Recommended Plan of Merger for the Port of Port Arthur are hereby approved and adopted by the Court.

c. The election of permanent officers shall take place in late 1983 in accordance with the provisions of the new local's Constitution and Bylaws.

d. The new Constitution and Bylaws are approved and adopted by the Court, as modified and amended pursuant to the Watson letter of February 18, 1983, to the Court.

e. Locals 1029 and 1175 have purchased a new hiring hall at 321 Shreveport Avenue in Port Arthur, which they plan to occupy on April 1, 1983. Should there be any delay in the new building's availability, Local 1029's hiring hall shall be used on a temporary basis.

f. Warehouse Local 440 in Port Arthur reportedly operates on an integrated and completely non-discriminatory basis. It does not compete with or share available work with any other longshoremen's local in Port Arthur. It has been retained in this case, at the request of the E.E.O.C., only for monitoring purposes. Therefore, Local 440 is not being merged with any other existing local, nor being required to change any of its operating procedures.

10. *Port of Port Lavaca*

a. Locals 1758 and 1763, with a combined membership of eighty-four longshoremen, are merging in Port Lavaca. On August 26, 1982, this Court adopted the

Master's August 29, 1980, recommendations for the merger of these two locals. The District recommended merger in accordance with the Master's plan. By letter hand-delivered to the Court on September 7, 1982, the presidents and business agents of Locals 1758 and 1763 stated they have been operating on an integrated basis for eight years and have no merger problems.

b. The seniority roster attached to the Master's recommendations, as updated by the attachment to the Merger Committee's September 7, 1982, letter, is approved and adopted.

c. Local 1758's hiring hall shall be used by the new merged local.

d. The hiring hall procedures, interim government agreement, and service charge fee provision in the Master's recommendations, as modified by attachment to the Merger Committee's September 7, 1982, letter, are approved and adopted.

e. The agreed upon Constitution and Bylaws, as modified by the Watson February 7, 1983, letter to the Court, are approved and adopted.

f. Election of permanent officers shall be in accordance with the provisions of the new Constitution and Bylaws. Nominations will be in November of 1983.

g. All assets and liabilities of the two existing locals shall be transferred to and assumed by the new merged local.

11. *Port of Texas City*

a. Deep Sea Locals 636 and 991 are merging. Local 636 has approximately eighty-six members. Local

991 originally submitted the names of fifteen members, but now reports an additional twenty-one names, six of whom are shown to be retired.

b. The seniority rosters are being merged by agreement of the Merger Committee and with the District's recommendation on a length of service basis. The Court has given Local 991 until April 1, 1983, to document the seniority of the additional names to the satisfaction of both the Merger Committee and the District. If this deadline is not met, the merged seniority list shall be approved and adopted in the form attached to Mr. Watson's letter of November 1, 1982, to the Court.

c. Local 636's present hiring hall will be used by the new merged local.

d. The Merger Committee reached agreement on the use of Local 636's current hiring hall procedures, a slate of officers and an executive board for the interim period, and a service charge fee of 5% of net pay plus $3.50 dues per quarter. The District has recommended approval of these proposals. The Court hereby approves and adopts the Merger Committee's proposals on the above items.

e. The proposed Constitution and Bylaws, as modified by the Watson February 7, 1983, letter to the Court, are approved and adopted.

f. Election of permanent officers shall be in accordance with the new Constitution and Bylaws. Nominations shall take place at the December 1983 meeting.

g. All assets and liabilities of the existing locals shall be immediately transferred to the new local. The Court is aware that Local 636 has substantial assets,

while Local 991 has none. However, the I.L.A. International Constitution prohibits any distribution to the members of Local 636.

h. Local 1406 has reportedly disbanded and has not been active since the Texas City disaster of 1947. Thus, while formally still a named party to this suit, Local 1406 has not been included in the merger negotiations. The District has been ordered in paragraph B.2.j. above to report to the Court within thirty days if this local is not being dissolved immediately.

D. *Conclusion*

1. Within thirty days of the date of this Order, the District shall file with this Court a supplementary report for each port, giving the new local number, the address of the temporary hiring hall, names and positions of the interim officers, a copy of the new local's hiring hall procedures and a complete merged seniority list for each local compiled pursuant to this Order.

2. The E.E.O.C. has proposed an oversight committee to monitor compliance with this Order, but the Court has decided that it would be best, for the time being, to place full responsibility for compliance on the parties themselves to complete the merger and permit the longshoremen to get on with the business of longshoring. The parties have been regularly and clearly warned by the Court the consequences which will befall them should they violate the letter or spirit of this Order. They know that the time for resisting merger has long since passed, and that they will be monitored by the E.E.O.C., by the International, by the District and by each other. Further oversight will be considered only upon a showing of good cause.

3. None of the terms of merger as set forth herein shall be modified or amended without prior approval of the Court prior to the election of permanent officers.

4. To the extent anything in this Order contradicts or conflicts with any previous orders in this case, this Order shall prevail.

5. The Court has directed the Clerk of Court to subdivide the file in this cause into subfiles by ports. Pursuant to that order, all documents relating to the Interim Merger Order of August 26, 1982, are kept by port. The subdivisions shall be kept intact so that reference to any matter in this Order may be found hereafter in the particular port's subfile.

6. The Court must note in conclusion that the task of merger has been eased by the diligent efforts of Special Masters Jefferson and White, and the Court commends them for their dedication to their duties.

Done at Houston, Texas, this 22nd day of March, 1983.

/s/ NORMAN W. BLACK
Norman W. Black
United States District Judge